

***City of Lynchburg
Review of the Forfeited Asset Sharing Program***

April 7, 2005



***Prepared by the Department of Internal Audit
City of Lynchburg***

Introduction

The Forfeited Asset Sharing Program is a result of the enactment of Section 19.2-386.22 of the *Code of Virginia* which allows law enforcement agencies to seize "all money and property used in substantial connection with the manufacture, sale or distribution of an illegal narcotic". If the Court orders that the property is forfeited, the property or proceeds from the sale of the property become available to the agencies for law enforcement purposes. The program is governed by Sections 19.2-386.1-14 of the code and is coordinated through the Virginia Department of Criminal Justice Services (DCJS).

One of the goals of the program is to increase the cooperative efforts among various law enforcement agencies since neighboring jurisdictions often investigate the same individuals for narcotic related offenses. When two or more agencies work together, they enter into an agreement to share the proceeds of the forfeited property.

Items can be seized any time within three years after the discovery of the last act providing grounds for the seizure. Commonly seized items include cash, vehicles, pagers, cellular phones and handguns. Once the items are seized, the Commonwealth's Attorney must file a "Notice of Seizure for Forfeiture" with the Clerk of the Circuit Court. The Clerk must then mail the notice to the last known address of all identified owners and lien holders of the property. Within twenty-one days of the seizure, the agency must file a Department of Criminal Justice Form 998 to report the seizure. At this point, a DCJS Seizure Number is assigned which enables the seizure to be tracked throughout the process.

When assets are seized by the Lynchburg Police Department (LPD), the Property and Evidence Coordinator barcodes each piece of evidence and scans them into a computer system. The system allows tracking of the evidence throughout the course of the associated cases. When the seized asset is money, the Officers count the money and complete a "Cash Accounting Summary" sheet. The money is then counted by Property and Evidence personnel and compared to the sheet. A barcode is assigned to each parcel of money and scanned into the computer, and the money is deposited in a bank account. The barcodes are maintained with the bank account records. Annual audits of the Property and Evidence Division's Cash Receipts and Disbursements were performed by Cherry, Bekaert & Holland, C.P.A.'s, for calendar years 2002 and 2003. An audit has been scheduled for 2004.

If a forfeiture is contested, the Court decides whether to uphold the forfeiture or return the property to the owner. Forfeited assets valued at less than \$500 are not administered

by DCJS and can, therefore, be kept by the locality. If the Court orders forfeiture of property with a value of \$500 or greater, the LPD submits a form to report the property to DCJS. A copy of the Court Order and a check for the amount of the forfeited currency or a Bill of Sale of forfeited items must accompany the form. When the information has been updated by DCJS, the local share of the forfeiture is returned to the City. The local share is 90% of the total forfeiture which is divided between LPD (60%) and the Commonwealth's Attorney (40%) and is recorded in the Forfeited Asset Fund. The Fund recipients must file annual certification reports with the DCJS at the end of each fiscal year.

The City received \$92,080.52 from the State for forfeited assets during fiscal year 2004. The year-end balance in the Forfeited Asset Fund was \$187,561.43, of which \$26,905.46 were from federal sources. There was no activity in the federal account during the period of this review.

This audit was performed at the request of the Audit Committee.

Review Objectives

The objectives of this review of the Forfeited Asset Sharing Program were to determine if:

- Seized property is properly safeguarded;
- Program activity is accurately reported to the State Department of Criminal Justice Services;
- Expenditures are allowable under the program; and
- Revenues and expenditures are accurately recorded on the City's financial records.

Scope of Work

The audit included a review of the annual certification reports submitted to the State by the Police Department and the Commonwealth's Attorney's office. Revenue reported on the certifications was compared to the City's Revenue Ledger and to the State listing of forfeited asset payments made to the City. The reported expenditures were compared to those recorded on the City's records and a review of expenditure documentation was performed to determine accuracy of reporting and propriety of the expenditure. In addition, the process for handling and storing seized property was reviewed.

The audit was conducted in accordance with auditing standards and, accordingly, included such tests of records and other audit procedures as were considered necessary in the circumstances.

The Internal Audit Department is free from organizational impairments to independence in our reporting as defined by government auditing standards. We report directly to an audit committee and, administratively to the city manager and are organizationally outside the staff or line management function of the areas we audit.

Opinion On Internal Controls

The objectives of a system of internal control are to provide reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management authorization and are properly recorded.

It is our opinion that controls are adequate to ensure safekeeping of the seized assets; however, controls need to be in place to ensure that the revenues and expenditures reported to DCJS are reconciled to the City's financial records. Proper reconciliation will ensure that both the State and the City have the same balance recorded for the fund.

Audit Conclusions

Based on the work performed, I conclude that:

- Seized property is properly safeguarded from loss or misappropriation;
- There were errors in the revenues and expenditures reported to DCJS for fiscal year 2004;
- Expenditures were allowable under the program guidelines; and
- Revenues and expenditures were accurately recorded on the City's financial records, *except as noted in the "Observations and Suggestions" section of this report.*

Observations and Suggestions

I. Incorrect Revenue Reporting

The following errors were noted in revenue amounts reported on the Annual Certification Reports submitted to the State Department of Criminal Justice Services for the 2004 fiscal year:

- Interest earned on the Police Department share of the fund was reported as \$370.83, but the financial records indicate earned interest of \$427.96.

The reported interest is furnished to the Police Department on a spreadsheet prepared in Financial Services. The department reported the interest from a spreadsheet which was not the final year-end spreadsheet.

- A \$58.00 check received by the Police Department for a State error made in fiscal year 2003 was not reported in the total revenue received. The department reported the revenue received via electronic transfers; therefore the \$58.00 check was not included in the amount.

- Revenue in the amount of \$5,138.56 received in fiscal year 2004 was not included in the revenue reported by the Commonwealth's Attorney.
The Commonwealth's Attorney's office uses the City's financial records to prepare the certification report for the State. Financial Services recognized the \$5,138.56 as revenue in fiscal year 2003 when the Property Disposition/Sharing forms were submitted to DCJS. An accounts receivable was set up for the amount due. Since the amount was recorded on the revenue ledger, it was included in the Commonwealth's Attorney's report to the State for 2003.

According to the program coordinator with the DCJS, the revenue should not be reported until it is actually received by the locality. Since the State recorded the payments in 2004, neither the revenue reported by the City nor the ending fund balance agreed with State records for fiscal years 2003 or 2004. The Commonwealth's Attorney's office submitted an explanation to the DCJS for the 2004 difference in payments.

Suggestion:

I suggest that the Police Department and the Commonwealth's Attorney's office report the revenue that is actually received in a fiscal year on the Annual Certification Reports to ensure that the fund balance agrees with that of the State. Reconciliations of the revenues recorded on the City's financial system to those payments actually received from DCJS should be performed, and any differences documented, to ensure the accuracy of the fund balance. I also recommend that more care be taken to ensure that the reported interest earned on the forfeited asset accounts accurately reflects the entire fiscal year.

II. Inaccurate Expenditures Reported

The expenditures on the Annual Certification Report submitted to the State by the LPD did not agree with the financial services expense ledger for the year. The errors noted were:

- Three expenditures reported as forfeited assets were coded to the general fund by mistake. The total of these expenditures was \$1,250.00.
- A \$592.86 transaction was accurately coded to the Forfeited Asset Fund but was not included in the report submitted to the state.

The Police Department maintains a spreadsheet of receipts and disbursements for the Forfeited Asset Fund. The expenditures recorded on this spreadsheet were reported to the State; however, the spreadsheet was not reconciled to financial system reports.

Suggestion:

I suggest that the Forfeited Asset Fund spreadsheet be reconciled to financial system reports throughout the year and at year-end to ensure that forfeited asset expenditures are accurately coded and in agreement with those posted to the spreadsheet.

III. Unreported Expenditures

The Sheriff's Office expended \$4,449.04 from the Forfeited Asset Fund during FY 2004, but did not report the expenditures to the State on an Annual Certification Report.

According to personnel in that office, they were not aware that they were required to submit annual reports to DCJS. The amount spent during the period of this review had been in the Sheriff's account for approximately seven (7) years. The 2004 expenditures depleted the Sheriff's share of the fund and the account now has a zero balance.

Suggestion:

I recommended to the Sheriff's Department that they contact the Forfeited Asset Program Coordinator for the Department of Criminal Justice Services and obtain the information needed for reporting the expenditures.

IV. Non Transfer of Interest On Seized Assets

The LPD deposits drug-related money seizures of less than \$5,000 into a single bank account and drug-related seizures of \$5,000 or greater into individual interest maximizer accounts. The interest earned on the individual accounts is added to the seized money when it is returned to the owner or forfeited and sent to the State Department of Criminal Justice Services. The interest earned on the seizures less than \$5,000, however, cannot be allotted to the separate seized amounts and is not forwarded with the money when it is distributed. That account currently has an earned interest balance of more than \$2,500.

The Forfeited Asset program manual states that interest earned on seized property is also subject to forfeiture and should be forwarded to DCJS with the amount seized.

According to the State's Forfeited Asset Sharing Program Coordinator, however, the interest does not have to be forfeited with the seized money unless it is specifically stated in a court order. If it is not included in the court order, the interest may be used by the locality for the Forfeited Asset program. The interest can be maintained in the checking account to help with administrative costs, or it can be deposited to the actual Forfeited Asset Fund.

The court orders issued by the Circuit Court in Lynchburg for dispensing seized funds specify that the interest earned on those funds be included in the total amounts to be dispersed. For those funds less than \$5,000, the City is not complying with court orders.

Suggestion:

I suggest that the Commonwealth's Attorney consider changing the court orders to exclude the interest from the forfeited amounts and those to be returned to the owner that are less than \$5,000, and consider applying the earned interest to the Forfeited Asset Fund. This will allow the City to comply with the Code of Virginia and the court orders, and increase the funds available for the program.

Management Responses

Commonwealth's Attorney:

The following is my response to your audit report regarding this office and the Forfeited Drug Asset Program:

Observation I -- You are correct that our reliance on Finance Department information led to the erroneous inclusion of FY 04 revenue in our FY 03 report. This occurred because Finance considers this money as revenue prior to actual receipt of funds. The problem will crop up whenever money is forfeited in one fiscal year, but not actually distributed by DCJS until after July 1. Finance insists on including the amount in the year forfeited, while DCJS requires that it be included the year it was distributed. We will avoid this problem in future years by assuming internal responsibility for receiving and accounting for these funds.

Observation IV -- I disagree with your recommendation that we can retain interest earned on seized money without a court order. I cannot find any statutory or administrative authority to support this suggestion. In fact, all seized property, other than property found by the court to be derived from the sale of illegal drugs, must by our Constitution, be paid into the literary fund. Additionally, if money is returned to an innocent owner, that person is entitled to interest earned while it was in possession of the police department. Under your suggestion, we would be taking interest that had been earned on money not yet forfeited. Without statutory or administrative authority for your recommendation, I am not willing to make any changes in the wording of the court order in this regard.

William G. Petty
Commonwealth's Attorney
City of Lynchburg

Auditor's Comment:

If the court orders continue to include interest earned on the seized amounts of less than \$5,000, the City will still be in non-compliance. I suggest that the Police Department devise a method to compute the interest on these individual seized amounts, or deposit future seizures in a non-interest bearing account.

I also suggest that the Police Department seek legal advice from the City Attorney to determine how to handle the accumulated interest in the current account.

Police Department:

TO: Carol Bibb
FROM: Captain M.R. Patterson
DATE: April 7, 2005
RE: Police State Asset Forfeiture Audit

I concur with the findings of the state asset forfeiture report for the police department conducted by Ms. Bibb. The following observations have been brought to my attention as a result of this audit.

Inherent problems occur when expenditures are not posted to the financial system in a timely manner. This is especially concerning with year end expenditures which are not posted until July. The end result is the true expenditure date (receipt) does not match the posted date. Future annual reports will be reconciled with the cities financial system posted dates and not the actual expenditure (receipt) dates.

The three coding errors have been addressed by forwarding a form to the account clerk detailing approved asset forfeiture expenditures.

I also concur with the report in the area of earned interest on seized assets. The city should take full advantage of the rules of asset forfeiture and file the appropriate court orders in order to be able to have access to interest earned which is currently over \$2,500.

Other Comments

I appreciate the cooperation and assistance I received from the Commonwealth's Attorney's Office, the Police Department and Financial Services while conducting this audit. I would especially like to thank Ms. Megan Palmer of the Police Department for her time and efforts in assisting me. I am available to discuss this report should there be any questions or concerns.

Carol J. Bibb, Director of Internal Audit

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